IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.MC.No. 1929 of 2007()

CRMP.2082/2007 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER: PETITIONER

MOLLY SEBASTIAN,AGED 36 YEARS,
W/O.NELSON K.A.KOZHIPPARAMBIL HOUSE,
VYTTILA,THYKKOODAM,ERNAKULAM.

BY ADV. SRI.T.D.ROBIN
SRI.R.ANUP

RESPONDENTS: RESPONDENT

STATE OF KERALA REP.BY THE PUBLIC
PROSECUTOR,HIGH COURT OF KERALA
(CRIME 249/2007 OF PANANGAD POLICE STATION)

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1929 of 2007

Dated this the 21st day of June, 2007

O R D E R

Petitioner is the registered owner of an autorickshaw. A crime has been registered by the police alleging that the petitioner's husband is guilty of the offences punishable, inter alia, under Sections 323 and 324 I.P.C. Inter alia, it is alleged that the petitioner's husband, the driver of the autorickshaw had made use of the autorickshaw as the weapon of offence to threaten, intimidate and cause injury to the defacto complainant. The petitioner applied for release of the vehicle. The learned Magistrate by the impugned order rejected the said prayer on the short ground that the autorickshaw is the weapon of offence in this case and therefore the same cannot be released.

2. I am in agreement with the learned counsel for the petitioner that the dismissal is most unsatisfactory. The learned Magistrate does not appear to have imbibed the spirit of the decision in **Sunder bhai Ambalal Desai v. State of Gujarat** [A.I.R 2003 S.C 638]. That decision is authority for the proposition that the courts must show eagerness and anxiety to ensure that valuable property does not lie unnecessarily in the court and suffer damage and deterioration. There is no dispute that the petitioner is the owner of

the vehicle. There is no contention that the vehicle deserves to be retained in the police station or the court for any other specific purpose. I am, in these circumstances, of the opinion that the vehicle certainly deserves to be returned to the petitioner subject, of course, to appropriate terms.

3. In the result, this Crl.M.C is, allowed. The impugned order is set aside. It is directed that the vehicle shall be released to the petitioner subject to the following terms and directions.

i) She shall produce before the Magistrate the documents to show that she is the owner entitled to the possession of the vehicle;

ii) She shall execute a bond for Rs.50,000/- (Rupees Fifty thousand only) with one solvent surety for the like sum to the satisfaction of the learned Magistrate;

iii) The petitioner, if the bond is executed by her, shall undertake to produce the vehicle as and when directed by the court.

(R.BASANT, JUDGE)

rtr/-